

Minutes
Rules Committee of the Commission for MH/DD/SAS
July 10, 2001

Attending

Commission Members: Pender McElroy (Chair), Martha Martinat, Pearl L. Finch, Albert Fisher, Floyd McCullouch, Emily H. Moore, Dr. William Sims and Frederica T. Stell

Lois Batton and Martha Macon were excused

Others: Ron Morton, Carol Clayton, Stephanie Alexander, Cindy Kornegay, Art Robarge, Mary Eldridge, Michael Watson, Bill Harris, Dr. Philip Veenhuis, Dr. Jack Blackley, Tom Miriello, Hank Debnam, Doug Baker, Curtis Bass, Richard Trotman, Brent Brady, Alan Jamieson, Kenny House, Tom Culver, Bill Harrington, Janet Banks, Marci Kindley, Robert Beasley, Charlotte Craver, Cornelia H. Person, W. Barry Allison, Phyllis Breul, Laura Hickey, Marilyn Brothers, Russ Anderson, Tom Bainbridge, Margaret Adams, Jennifer Greene, Deanna Janus, Mike Hussey, Cara Clayton, Joann Neal, Jeff Holder, Todd Barwick, Charles Li, James Harris, Teresa Kennedy, Beth Phillips, Christine O. Heinberg, Cynthia Tomoshenko, Mazie Fleetwood, Becky Schlein, Terry Stelle, Jim Jarrard, Hope Ethington, Ellen Russell, Fred Waddle, Adam Mack, Dennis Mays, Michael Harris, Anna McDonald, Mike Kupecki, Bob Hedrick and Tara Larson

Handouts: Agenda, House Bill 387, Draft 14V.4100 draft changes, “122C-60 Use of Physical Restraint or seclusion”, Summary of Fiscal Impact Statement for Seclusion and Restraint Rules” “Seclusion and Restraint Package”, “Professional Categories and Definitions”, July 9, 2001 Draft Rule Making Policy, “The Crack-Up of Psychiatry,” **Business Week**, July 9, 2001, Rule Tracking Grid –July 9,2001, “Proposed Change to NC Administrative Code T10: 14V.3600, (Methadone), Map of NC Methadone Clinics, July 10, 2001 Child Residential Family Rules Update, “June 9th N&O Article”, Draft 14V.4100 – Homes for Individuals With Substance Abuse Disorders and their Children.

Discussion

The meeting was called to order by Chairman Pender McElroy. Attendees were introduced.

Ron Morton made the motion, seconded by Emily Moore to accept the April 10th minutes as presented. The motion passed unanimously.

Marian Hartman presented the recently ratified House Bill 387. This bill requires all new DD group homes to be licensed as 122C instead of allowing 131D. The bill does allow for existing DD group homes to choose either form of licensure but conversion to 122C is encouraged. A work group has been formed to plan for possible rule changes. Recommendations for changes will be presented at the October Rules meeting.

Starleen Scott Robbins presented draft recommended rule changes for 14V.4100, Therapeutic Homes for Individuals with Substance Abuse and Their Children. As a result of HB 1840 changes are required in rules in order to implement the intent of the legislation and the goals of the appropriations. Specific changes are being recommended in subsection .4101 and .4102 and .4103. Formal presentation will be at the October meeting. These changes will fall under temporary rule making authority but rules are being formulated in a manner to provide easier transition for permanent status. Comments regarding the draft set of rules should be sent to Ms. Scott Robbins prior to the October presentation.

Doug Baker presented recommended rule changes to 14V.3600, Outpatient Narcotic Addiction Treatment. These changes are required due to changes in federal rules. A copy of the federal rules was provided to Committee members. A work group of providers and Division staff was formed for rule development. The draft rules represent the recommendations of the work group. Highlights of the changes and committee recommendations include:

- Changes in take home schedule.
- Recommended change in title.
- Take home eligibility: 7 levels recommended
- Privileging needs to be changed to eligibility
- Criteria for Earning
- JCAHO/CARF accreditation will be required
- Add definition or explanation of physical definition.

Members discussed the following points regarding the rule revision:

- How is recent defined? The leveling process defines the minimum monthly drug screen and if positive.
- Define counseling session or reference clinical judgement, Item (3) should have review for ADA requirements or review in light of new federal regulations regarding physical disability.
- Define random testing in regards to the frequency
- Section J references the addition of the list exchange to the computerized Central Registry. The client would sign a release of information and refusal could lead to participate in treatment. Further clarification of this requirement is needed. Refusal to sign consent has not been a problem. Rules do need to be specific if the client refuses. Diversion plan is what is required, not the consent. The issue is enrollment in more than one program – treatment is contingent upon verification of enrollment in another program.

Martha Martinat made the motion seconded by Federica Steel that the Rules committee recommends adoption of the revised rule T10: 14 V.3600 Outpatient Opioid Treatment with changes. Motion carried unanimously.

Stephanie Alexander presented the update on the child residential rules (Handout distributed). The rules address therapeutic families and group settings. Family settings would move to 131-D licensure while the group settings would remain under 122C with significant revisions.

DSS and DMH staff have reported to the met with the DSS Commission. The logistics will need to be worked through on the transition and coordination will need to happen. DMH is supportive of this move as long as the DSS Commission adopts the rule revisions recommended to the 131D rules.

Tom Bainbridge presented an update on the rule revisions recommended for the group settings. Comments regarding the presentation should be sent to Tara Larson who will distribute them to the Commission members. Members will also receive a copy of the overhead presentation.

During the presentation the following discussion occurred:

- Issues regarding privacy about cameras
- Cameras are not intended to replace staff,
- Rates should be reflective of the use cameras, i.e. less staff means less cost.
- Staff must still be able to respond and a response time should be added for staff if using cameras.
- Incident reporting will go to DFS and to area programs but there should be a formal requirement (MOA).
- Who approves the qualification of the provider/staff?
- Competencies have been added instead of just a degree. There have been problems with providers finding people with experience. There should be options of qualifications while making sure the staff are qualified and trained to provide the service.

Dr. Art Robarge presented the Director's Report. The presentation focused on the budget situation and the state planning efforts. The decisions will need to be made regarding who to serve and how to serve them.

Bob Kurtz provided the first part of the seclusion and restraint Package including the background of the rules (Handout -Use of Physical restraint or seclusion handout) HB 1520 and GS 122C-60 and changes recommended since the temporary rules went into effect January 1, 2001.

The Committee and attendees made the following comments/discussion:

- What does notification of the client rights representative mean? What does the person do once notified? What is the intent?
- Should the reports be sent to Raleigh? Certain reports are required to be sent to DFS as part of the licensure process. License is still for two years.
- Why should there be debriefing with the family on a planned intervention and why does the team have to review it? The team and family have already signed treatment

plan. There is a difference in a plan intervention versus an emergency intervention. Include expectations in the plan and don't have a separate set of elements.

The second part of the Seclusion/Restraint presentation was made by Joan Kaye, training requirements for the state facilities and community. Comments and discussion were around the following areas:

- Supervisor/person doing restrictive intervention must have the training. All staff are trained in the prevention domains. A possible impact of this requirement will be that more challenging clients will not be accepted.
- Staff can't be left alone with clients. All staff must have the training within 90 days of employment. Recommendation is to add a clause that gives the flexibility – don't focus just on the training due to the "behavior problems" when there is some training that staff need in general. GACPD made compromises on everything but the training is non-negotiable on their part. Staff could escalate the problem if they don't know how to communicate with clients.

Bill Harris gave the presentation on the changes in staff qualifications, privileging and credentialing. (Handout -Professional Categories and Definition). The work of the child residential group should be coordinated with this activity.

Bob Kurtz presented the Fiscal Note for the Seclusion/restraint package including how the note was developed. The attendees discussed the accuracy and an assumption made in the development of the note, citing that the note does not capture the full cost of the requirement.

The following speakers presented to the Committee (written comments attached):

Dick Rutherford on behalf of NC Community Support Provider's Council

Fred Waddle on behalf of NC Community Support Provider's Council

Janet Banks on behalf of Group Homes for the Autistic Homes

Curtis Bass on behalf of Association of Community Based ICF/MR Providers

Joan Neal on behalf of Skill Creations, Inc

Jeff Holden on behalf of Murdoch Center

Christine Heinberg on behalf of Carolina Legal Assistance

Bob Hedrick on behalf of NC Community Support Provider's Council

Dennis Mays from O'Berry Center

Robert Beasley on behalf of Youth Opportunities on behalf of Child Residential Work Group

Mike Kupecki on behalf of NC Council of Community Programs

Maize Fleetwood on behalf of South Central Regional Team

Michael Watson on behalf of Sandhills Center

Becky Schlein on behalf of Western Carolina Center

Given the continued concerns regarding the Seclusion/Restraint package more review and input is needed before the Committee members can make any recommendations to the full Commission. Motion was made by Pearl Finch and 2nd by Floyd McCullough to have another Rules Committee meeting on August 14th instead of the full MH/DD/SA

Commission meeting. Chairman, Emily H. Moore of the Commission would set the date for September Commission meeting. The motion passed unanimously.

The Committee requested that staff present to the Committee at the August 14th meeting the Division recommendations regarding the comments received. These positions will be distributed to members prior to the 14th meeting. Comments will be taken until July 24th for inclusion in the Comment Summary.

The following miscellaneous items were discussed:

- Articles regarding Secretary Hooker Buell and “The Crack Up of Psychiatry” were distributed to Committee members.
- The revised Rulemaking Policy was distributed for review and members request adding the role of the public hearing process on the policy. This would include the “public hearings” at both the Rule Committee and the full Commission meetings.
- The updated Rule Tracking Form was distributed
- Update of the MH Reform Bill
- Update of the Secretary’s State MH/DD/SA Plan. The Rules Committee recommends that the Commission Advisory Committee review the plan and make recommendations.

Albert Fisher made the motion, 2nd by Floyd McCullough to adjourn the meeting.